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FISCAL IMPACT STATEMENT

LS 7549 | **NOTE PREPARED:** Jan 20, 2011
BILL NUMBER: SB 569 | **BILL AMENDED:**

SUBJECT: Tax Procedures.

FIRST AUTHOR: Sen. Holdman | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
DEDICATED
FEDERAL

Summary of Legislation: This bill changes the method for calculating interest due on property tax payments and refunds. It indicates that an explanation of appeal procedures must be included in a property tax bill if a change in assessment was made without sending out a Form 11. It provides that a taxpayer may appeal a dispute over interest, penalties, collection fees, clerk's costs, sheriff's costs, and collection agency fees imposed on delinquent property taxes by filing a Form 133 with the county auditor. It also permits an appeal to the Tax Court.

The bill specifies that the Tax Court has jurisdiction over: (1) a dispute related to a refund for a tax administered by the Department of State Revenue after the expiration of the date a claim for refund may be filed; (2) settlement agreements between the taxpayer and the Department of State Revenue; and (3) interest, penalties, collection fees, clerk's costs, sheriff's costs, and collection agency fees related to the collection of a tax administered by the Department of State Revenue.

The bill indicates that a modification of federal tax liability or a federal tax return need not be reported to the Department of State Revenue until the federal modification becomes a final, binding determination. The bill specifies that a taxpayer earns interest on an overpayment of state taxes from the date the tax return was due. It requires the Department of State Revenue to standardize the form used to give notice of the denial of a refund. The bill also provides that, unless the jeopardy assessment provisions of law apply or the Tax Court authorizes collection, the Department of State Revenue may not issue a demand notice for a tax or initiate a collection action until after a taxpayer's right of appeal expires (if the taxpayer does not appeal an assessment) or the date a final Tax Court decision is issued (if a timely appeal is filed).

Effective Date: Upon passage.

Explanation of State Expenditures: *Indiana Board of Tax Review (IBTR):* Under this bill, the IBTR would hear taxpayer appeals regarding interest, penalties, collection fees, clerk's costs, sheriff's costs, and collection agency costs as they relate to property tax. This provision could result in an increase in appeals heard by the IBTR.

Department of Local Government Finance (DLGF): The DLGF currently prescribes the TS-1 tax statement form used by county treasurers. Under this bill, the form would have to be redesigned to add additional information regarding appeals for use in some instances. The DLGF updates the form each year so this change could be incorporated into the annual update for the 2012 form.

Department of State Revenue (DOR): This bill requires the DOR to adopt a standard form for giving notice of the denial of refunds. This provision should have no fiscal impact.

Indiana Tax Court: The bill provides that the Indiana Tax Court has jurisdiction regarding a claim for refund after the claim has been pending for three years, and it clarifies that the Tax Court has jurisdiction over disputes regarding settlement agreements entered into between the DOR and taxpayers. The bill also clarifies that the Tax Court has jurisdiction over disputes regarding the validity of penalties, interest, collection fees, clerk's costs, sheriff's costs, and collection agency fees imposed in connection with a tax liability. These provisions could result in an increase in appeals heard by the Tax Court.

Explanation of State Revenues: *Interest on Overpayment of Taxes*: This bill provides that interest accrues from the later of the date on which the tax payment was due, or the tax payment was paid. Current statute provides that interest on an excess tax payment that the DOR does not refund or credit against a current or future tax liability within 90 days after: (1) the refund claim is filed; (2) the date the tax payment was due; or (3) the date the tax was paid; whichever is later, accrues interest from the date on which the refund claim is filed. The impact of this provision will ultimately depend upon the administrative actions of the DOR.

Explanation of Local Expenditures: *Property Tax Notice:* Under current law, an assessing official must give notice to a taxpayer any time property is assessed or reassessed. The notice must include a description of appeals procedures and appeals forms, and a notice that an appeal requires evidence relevant to the value on the assessment date.

Under current law, the county treasurer must annually mail an informational tax statement, called a TS-1, to each property owner. This bill would require the statement to include appeals information if the assessor changes the assessment without sending the assessment notice. The appeals information must include the procedure for obtaining an informal appeal, a description of the formal appeals procedures and appeals forms, and a notice that an appeal requires evidence relevant to the value on the assessment date. Unless additional pages are required, treasurers' expense for adding appeals language to the TS-1 would be minimal.

Explanation of Local Revenues: *Interest Rates:* Currently, there are several different interest rates applied to property tax payments and tax sale redemptions, depending on the specific statute. This bill would standardize the annual interest rate at the rate determined by the DOR which is 2 percentage points above the average investment yield for the state's previous fiscal year, excluding pension fund investments. The annual interest rate applied by the DOR to tax year 2009 was 7%.

This provision would not affect the late payment penalty assessed for paying property tax after the May 10th and November 10th due dates. Those penalties would remain at 5% if paid within 30 days and 10% if not paid within 30 days.

The rate set by the DOR each year could be higher or lower than (or the same as) the current property tax interest rates. If the new rate is higher, more interest would be earned by local taxing units on delinquent tax payments and by tax sale purchasers on redeemed property. Local expenses for interest on property tax refunds and tax sale refunds would also be higher. If the new rate is lower, less interest would be earned by taxing units and tax sale purchasers but local expenses for interest on refunds would be lower.

A table of the current property tax interest rates appears below.

Type of Interest	Current Rate
Paid by property owner for property taxes paid on the withdrawal of land classified as forest land, windbreak land, or filter strip land.	10% / year
Paid by property owner for property taxes paid on an omitted assessment of utility distributable property.	2% / month
Paid by property owner for property taxes paid because of the termination of an exemption for low income housing.	10% / year
Paid by property owner for property taxes paid by a lienholder (creates an additional lien).	10% / year
Paid by redeemer on taxes and assessments paid by a tax sale purchaser after the tax sale.	10% / year
Paid by redeemer on the amount by which the purchase price exceeds the minimum bid on a tax sale property.	10% / year
Paid by county to purchaser for an invalid tax sale.	6% / year
Paid by property owner on lien amount when a tax deed in ineffectual to convey title (creates an additional lien).	10% / year
Paid by county on claim for refund of property taxes.	4% / year
Paid by taxpayer on late or increased assessments.	10% / year
Paid by taxpayer on amounts due after an appeal.	IRS Overpayment Rate, Currently 7%

Error Corrections: Under current law, a county auditor must correct the tax duplicate for the following errors:

1. The description of the real property was in error.
2. The assessment was against the wrong person.
3. Taxes on the same property were charged more than 1 time in the same year.
4. There was a mathematical error in computing the taxes or penalties on the taxes.
5. There was an error in carrying delinquent taxes forward from 1 tax duplicate to another.
6. The taxes were illegal.
7. There was a mathematical error in computing an assessment.
8. The taxpayer was not given credit for an exemption or deduction through a tax official's error.

Corrections of issues 6, 7, and 8 require approval from at least two of the following officials: The township assessor, county assessor, and county auditor.

This bill would allow for the correction of additional error types, add documents that would have to be corrected, and add appeals rights for some issues. This provision could increase county auditors' duties by a small amount. The specific changes include the following.

Under this bill, the auditor would also be required to make corrections for mathematical errors regarding interest, collection fees, clerk's costs, sheriff's costs, and collection agency costs. If approved by both the county treasurer and county auditor, the auditor would also make corrections if the interest, collection fees, clerk's costs, sheriff's costs, or collection agency costs were imposed on the wrong person. If the treasurer and auditor don't agree, then the PTABOA would make a determination.

In addition to the tax duplicate, the bill would require that any corrections be made to any record where taxes, penalties, interest, and costs are posted.

Under the bill, a taxpayer could appeal a determination for issues 1 through 5 to the county property tax assessment board of appeals (PTABOA).

State Agencies Affected: Department of Local Government Finance; Indiana Board of Tax Review; Department of State Revenue; Indiana Tax Court.

Local Agencies Affected: County and township assessors; County auditors; County treasurers; County property tax boards of appeal.

Information Sources:

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